

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

LIVERMORE AUTO GROUP, INC.

and

**EAST BAY AUTOMOTIVE MACHINISTS
LODGE NO. 1546, DISTRICT LODGE
190, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

**Cases 32-CA-163965
32-CA-169198
32-CA-172327
32-CA-172872
32-CA-174891
32-CA-179232**

DECISION AND ORDER

Statement of the Cases

On December 29, 2016, Livermore Auto Group, Inc. (the Respondent) and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The Respondent waived all further and other proceedings before the Board to which it may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Employer's business

¹ The Charging Party declined to enter into the Formal Settlement Stipulation, and it has filed objections to the Stipulation with the Regional Director. The Regional Director and the General Counsel recommend approval of the settlement on the grounds that, inter alia, it fully remedies all of the substantive allegations of the second amended consolidated complaint and provides for the entry of Board and court orders. We have carefully considered the Charging Party's objections to the settlement, and we conclude that it would effectuate the purposes and policies of the Act to approve the settlement agreement.

(a) At all material times, the Respondent, a Delaware corporation with an office and place of business in Livermore, California, has been engaged in the retail sale and non-retail sale and servicing of automobiles.

(b) In conducting its operations during the 12-month period ending December 31, 2015, the Respondent derived gross revenues in excess of \$500,000.

(c) In conducting its operations during the 12-month period ending December 31, 2015, the Respondent purchased and received at its Livermore, California facility goods valued in excess of \$5,000 directly from points outside the State of California

(d) At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

At all material times, the East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

3. The bargaining unit

(a) The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time technicians and lube technicians employed by Respondent at its facilities located at 2266 Kitty Hawk Road and 2232 Kitty Hawk Road, in Livermore, California; excluding all other employees, service writers, parts persons, sales persons, managers, office clerical employees, guards, and supervisors as defined by the Act.

(b) On August 16, 2013, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

(c) At all times since July 16, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

(d) At all material times since August 16, 2013, the Respondent and the Union have been engaged in negotiations for an initial collective-bargaining agreement covering the unit (the negotiations).

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, Livermore Auto Group, Inc., Livermore, California, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities by making changes related to their wages, hours, and other terms and conditions of employment without first providing appropriate notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or without first bargaining with the Union to an overall good-faith impasse for an initial collective-bargaining agreement.

(b) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities, by failing to provide, or to timely provide, to the Union requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the unit employees, or by failing to timely inform the Union that requested relevant information does not exist.

(c) Failing or refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees at its Livermore, California facilities, by bypassing the Union and dealing directly with employees in the unit by meeting with and soliciting them to enroll in the New Unit Healthcare Plans.

(d) In any like or related manner interfering with, restraining or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request by East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO, prospectively rescind any or all of the changes referred to below and return to the status quo ante; however, as indicated below in paragraphs 2(a)(2), 2(a)(3), and 2(c), this Order shall not be construed as permitting the Union to demand cancellation of any portion of any increase in unit employee compensation which is compelled by California state law:

(1) The Single-Employee 40-Hour Workweek Guarantee granted to unit employee Ken Latrelle about May 2015;

(2) The New Unit Pay Plan given to all unit employees on October 1, 2015; however, this portion of the Order should not be construed as requiring cancellation of any increase in unit employee compensation received as a result of this unilateral change which was compelled by California State Bill AB-1513;

(3) The Hourly-to-Flat Rate Change and the Wage Increase from \$19.00 to \$23.00 per hour granted to unit employee Brad Lovell about October 21, 2015; however, this portion of the Order should not be construed as requiring cancellation

of any increase in unit employee compensation which is compelled by state minimum wage requirements;

(4) The Initial Wage Rate of \$35.00 per hour and the Initial Hourly Plus Flat Rate Production Bonus granted to former unit employee Thai Ly upon his rehire about October 21, 2015; however, this remedy will not be required if former unit employee Thai Ly is no longer employed by the Respondent;

(5) The New Unit Healthcare Plans. This portion of the Order would require the Respondent, at the Union's request, to return to the status quo ante and reinstate the healthcare benefits provided to unit employees under the Three Kaiser Plans at the 2015 plan rates, and/or to provide unit employees with a substantially equivalent plan if one or more of the Three Kaiser Plans no longer exists; and make unit employees whole for any losses they may have suffered as a result of the unilateral implementation of the New Unit Healthcare Plans, including increased co-pays, out-of-pocket expenses, and/or increased monthly premium contributions deducted from their pay over and above the amounts such employees paid in 2015 to ensure that such employees receive for their 2016 healthcare plan the same level of coverage at the same rate that they previously paid for the effective dates of the 2016 healthcare plan plus interest, if any, in amounts to be determined by evidence presented to Region 32's Compliance Officer. Within 14 days of service by the Region, the Respondent will notify all unit employees, in writing, that they are entitled to submit proof of and claim reimbursements (including interest) for any increased co-pays, out-of-pocket expenses, and/or increased monthly premium contributions for the effective dates of the 2016 healthcare plan year plus interest, if any, that they have incurred as a result of the Respondent's unilateral changes in their health insurance coverage for the 2016 healthcare plan year. In its written communication, the Respondent will inform unit employees that they have 30 days from the date of that communication to submit any such claims to Region 32's Compliance Officer by mailing those claims to: Paloma Loya, Compliance Officer, Region 32, National Labor Relations Board, 1301 Clay Street, Suite 300N, Oakland, CA 94612-5224. The Respondent will forward a copy of this written communication to Region 32's Compliance Officer at Paloma.Loya@nrlrb.gov.

(b) Upon request by the Union, bargain collectively with the Union regarding each of the unilateral changes set forth above in paragraph 2(a), including the Single-Employee 40-Hour Workweek Guarantee granted to unit employee Ken Latrelle, the New Unit Pay Plan given to all unit employees on October 1, 2015, and the Hourly-to-Flat Rate Change and Wage Increase granted to Brad Lovell, until it reaches an agreement or an overall good faith impasse for an initial collective-bargaining agreement.

(c) Upon request by the Union, bargain collectively with the Union regarding the \$20 Hourly Plus Flat Rate Production Bonus granted to new unit employees Joseph Silva, Kyle Paradiso, Juan Cruz and David Koehler, upon their respective dates of hire; and bargain collectively with the Union regarding the prospective wage rates and/or rate of pay and/or flat rate plus production bonus for new unit employees, including Joseph Silva, Kyle Paradiso, Juan Cruz and David Koehler; this remedy will not require the Respondent to bargain collectively with the Union with respect to unit employees Kyle Paradiso and David

Koehler if unit employees Kyle Paradiso and David Koehler are no longer employed by the Respondent; this portion of the Order does not require rescission of the \$20 Hourly Plus Flat Rate Production Bonus granted to new unit employees Joseph Silva, Kyle Paradiso, Juan Cruz and David Koehler and return to the status quo ante because rescission would necessarily result in the new unit employees being paid a wage rate and/or rate of pay below the minimum which is compelled by state minimum wage requirements.

(d) To the extent it has not done so already, within 14 days of the Board's Order, make unit employees whole for any losses incurred as a result of the Respondent's unilateral changes detailed above in paragraph 2(a).

(e) Provide to the Union, to the extent the Respondent has not already done so, or unless the Union no longer seeks it, the Calculation Information, the Pay Statements Information, the Healthcare Plans Renewal Sheet Information, the Employee Efficiency Report Information, and the New Unit Healthcare Plan Information.

(f) Within 14 days of service by the Region, post at its Livermore, California facilities copies of the attached Notice marked "Appendix A." Copies of the Notice, on forms provided by Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Responsible steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 2015.

(g) Within 30 days of service by the Region, the Respondent will hold a meeting or meetings for the unit employees at its Livermore, California facilities, scheduled to ensure the widest possible attendance on each shift, at which the Respondent's Vice-President Jeff Pauley will read the Notice to Employees on work time in the presence of a Board Agent. Alternatively, a Board Agent will read the Notice to Employees at such meetings in the presence of Jeff Pauley and Steve Lowery. The Respondent will provide an opportunity for a representative of the Union to be present for the reading of the Notice to Employees. The date and time(s) of the reading must be approved by the Regional Director. The announcement of the meeting(s) will be in the same manner the Charged Party normally announces meetings and must be approved by the Regional Director.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., March 15, 2017.

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose a representative to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail to bargain in good faith with East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) in the following unit (the unit):

All full-time and regular part-time technicians and lube technicians employed by Respondent at its facilities located at 2266 Kitty Hawk Road and 2232 Kitty Hawk Road, in Livermore, California; excluding all other employees, service writers, parts persons, sales persons, managers, office clerical employees, guards, and supervisors as defined by the Act.

WE WILL NOT bypass the Union and deal directly with our employees in the unit by meeting with employees to enroll them in any new health care plan without first obtaining the consent of the Union or without first bargaining to agreement or good faith impasse with the Union over offering any such new healthcare plan and the effects of offering any such new health care plan.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain to agreement or impasse, unilaterally implement new healthcare plans for unit employees and unilaterally change premium rates paid by unit employees.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain to agreement or impasse, unilaterally implement a new pay plan for unit employees ostensibly to comply with California State Bill AB-1513.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, make any unilateral changes in unit employees' terms and conditions of employment, including unilaterally changing a unit employee's rate of pay from hourly to flat rate and/or unilaterally granting a unit employee a pay raise.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, make any unilateral changes in unit employees' terms and conditions of employment, including unilaterally granting a unit employee a 40-hour workweek guarantee.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain to agreement or overall impasse, exercise discretion in setting a re-hired unit employee's initial wage rate and/or by determining that this employee be paid hourly plus flat rate production bonus rather than a flat rate or an hourly wage rate.

WE WILL NOT, without providing the Union with prior notice and the opportunity to bargain, exercise discretion in setting the initial wage rate for newly hired unit employees and/or in determining that new unit employees will be paid hourly plus flat rate production bonus rather than a flat rate or an hourly rate.

WE WILL NOT fail and refuse to provide, or unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative, including the following information: information relating to how we have computed unit employee wages since July 1, 2014; information regarding how we kept track of hours worked and jobs performed by unit employees since July 1, 2014; copies of all pay statements for unit employees since July 1, 2015; a copy of the healthcare plans renewal sheet; information regarding unit employee efficiency in the six months prior to November 30, 2015; the current wage rates for unit employees; an updated list of master technicians; and a copy of the new healthcare plans that we offered to employees starting about January 1, 2016.

WE WILL NOT refuse to bargain collectively with the Union by failing to timely inform it that requested relevant information regarding the new unit employee pay plan does not exist.

WE WILL, if requested by the Union, rescind the Kaiser, Sutter, and Anthem Blue Cross healthcare plans that we made available to unit employees as a health insurance option in 2015 and **WE WILL** bargain to agreement or impasse with the Union regarding replacement plans.

WE WILL, if requested by the Union, make diligent and reasonable efforts to enable unit employees who, effective January 1, 2016, dropped out of Kaiser healthcare plans they were enrolled in in 2015 and who wish to re-enroll in those plans, to do so, and for any employees who are able to re-enroll in these plans, **WE WILL** pay any additional premium contributions over and above the amounts such employees paid in 2015 necessary to ensure that such employees receive the same level of coverage and at the same rate that they previously had, for the effective dates of the 2016 healthcare plans.

WE WILL make unit employees whole for any losses suffered or expenses incurred as a result of their dropping out of the Kaiser healthcare plans that they were previously enrolled in in 2015 and their enrollment in the new Kaiser, Sutter, and Anthem Blue Cross healthcare plans that we made available to them as an option for 2016.

WE WILL, if requested by the Union, rescind the new pay plan for unit employees implemented on October 1, 2015 without bargaining with the Union, to the extent that it does not cancel any increase in unit employee compensation which was compelled by California State Bill AB-1513.

WE WILL, if requested by the Union, rescind the grant of a guaranteed 40-hour workweek to a unit employee; **WE WILL** rescind a change to a unit employee's rate of pay from hourly to flat rate; and **WE WILL** rescind a unit employee's wage increase.

WE WILL bargain with the Union to agreement or impasse before again setting the initial wage rates and rates of pay granted to newly hired unit employees.

WE WILL bargain in good faith with the Union as the collective-bargaining representative of our unit employees with respect to terms and conditions of employment, including unit employee pay plans, unit employee workweek guarantees, unit employee wage rates, and unit employee healthcare plan benefits and rates.

WE WILL make unit employees whole for any losses incurred as a result of unilateral changes we made without providing notice and/or opportunity to bargain to the Union.

WE WILL provide to the Union, unless already provided or the Union no longer seeks it, information relating to how we have computed unit employee wages since July 1, 2014; information regarding how we kept track of hours worked and jobs performed by unit employees since July 1, 2014; copies of all pay statements for unit employees since July 1, 2015; a copy of the healthcare plans renewal sheet; information regarding unit employee efficiency in the six months prior to November 30, 2015; the current wage rates for unit employees; an updated list of master technicians; and a copy of the new healthcare plans that we offered to employees starting about January 1, 2016.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

LIVERMORE AUTO GROUP, INC.

The Board's decision can be found at www.nlrb.gov/case/32-CA-163965 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

